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7 March 2023

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Dear Energy Policy WA

REVISED MARKET POWER MITIGATION FRAMEWORK - DRAFT AMENDING WHOLESALE ELECTRICITY MARKET (WEM) RULES - EXPOSURE DRAFT #2

Synergy welcomes the opportunity to provide a submission on Energy Policy WA's (**EPWA**'s) Revised Market Power Mitigation Framework – Draft Amending Wholesale Electricity Market (**WEM**) Rules – Exposure Draft #2 (**Revised MPM Rules**). Synergy commends EPWA on their efforts to date on the Market Power Mitigation (**MPM**) framework and its implementation. Synergy supports the revisions to the drafting and considers that, at a high-level, the Revised MPM Rules represent a material improvement on the first draft and achieve a more balanced approach to the MPM framework.

Synergy's detailed comments on the Revised MPM Rules are outlined in the **attached** table for EPWA's consideration.

Synergy's primary concern with the Revised MPM Rules is the use of objective tests that are proposed in clauses 2.16A.1 and 2.16C.5 of the Revised MPM Rules. These tests assume that there exists a single, objectively discoverable and 'correct' market price that market participants should offer for each and every possible scenario. However, Synergy agrees with the following point made by Alinta Energy Pty Limited (**Alinta**) in its recent submission about the ERA's draft Offer Construction Guideline:

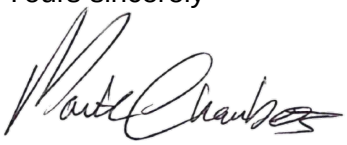
> "*Offers will not conform to a single economic model… Many aspects of offers are not "mechanistic", being based on many uncertain market variables and human perceptions of risks…"*

Synergy further agrees with Alinta's conclusion that the "... *more appropriate question is whether an offer was reasonable, considering the risks and uncertainties present at the time it was made.*"

To address the above concern, Synergy submits the Revised MPM Rules should be amended so that the relevant MPM test is whether a market participant's offer prices are a "*reasonable estimate*" of the objective 'efficient price', taking into account the relevant market participant's circumstances.

Synergy thanks EPWA for their work on the MPM framework and its implementation and looks forward to EPWA's continued consultation on market reform matters.

Yours sincerely



MARK CHAMBERS
GENERAL MANAGER WHOLESALE

Detailed Comments on the Revised MPM Rules

Market Power Mitigation Framework – Draft Amending WEM Rules for Consultation				
#	**Rule ref.**	**Classification**	**Issue**	**Suggestion**
1.	All (particularly: 2.16.3C, 2.16C.6, 2.16D.4 and 2.16D.15)	Moderate	Synergy considers that the Revised MPM Rules need to take into consideration the time needed by Market Participants to implement the required changes into their systems and processes. In this regard, Synergy notes that the ERA has not yet finalised the Offer Construction Guideline nor the Trading Conduct Guideline, and these guidelines will impose additional specific, but as yet unknown, obligations upon Market Participants. Further, given Market Participants are currently undergoing their market readiness programs for the commencement of the new market, the ability to enact changes after systems and processes have been built may require additional time. Synergy considers that a transitional period providing for a limited amnesty is required to ensure implementation and any new record keeping obligations can be reasonably achieved. Specifically, Synergy suggests that, for the duration of the amnesty period, Market Participants should be excused from non-compliance with the WEM Rules subject to: - the Market Participant using reasonable endeavours to implement systems and processes to comply with the new requirements; and - the relevant act or omission constituting gross negligence, fraud or wilful breach of the relevant new obligations. - Synergy considers that amending the WEM Rules to expressly provide for such a limited amnesty strikes the correct balance between giving effect to the intention of the Revised MPM Rules on the one hand and, on the other, the Taskforce recommendation for a compliance amnesty period from market start to "enable participants to adjust and become familiar to the new WEM requirements without the threat of compliance action" This is particularly so in the context of the very short period that Market Participants will be provided to understand and implement all required obligations.	
2.	2.16D.1	Moderate	Synergy notes that the ERA's recent draft Offer Construction Guideline appears to expressly prohibit market participants from including in their market offers either: - a general risk margin (unless risks were effectively asymmetric); nor - any margin to allow for a reasonable rate of return. Synergy submits EPWA should amend the Revised MPM Rules to ensure the ERA allows Market Participants to include such risk margins and earn such reasonable rates of return.	

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3.	2.16.1D(a)(iii)	Clarification	Synergy welcomes EPWA's proposed amendment to clause 2.16.1D(a) require the ERA to prepare an Offer Construction Guideline that allows for the recovery of costs under a long-term take-or-pay fuel contract. However, Synergy considers it is unclear whether this clause, as currently drafted, allows for the recovery of: 1. 'all' $/GJ costs incurred under a long-term take-or-pay contract; or 2. only costs under such contracts that are 'variable'. In particular, Synergy is concerned that this clause could be interpreted to only apply to any variable component of a long-term take-or-pay contract and, therefore, not allow a market participant to include its $/GJ costs when using fuel from the 'take-or-pay' component of those contracts (i.e. because those costs are sunk and arguably not 'variable'). Synergy suggests this clause is further amended to clarify that all costs incurred under a long-term take-or-pay contract can compliantly be included in market offers, potentially by deeming such costs to be variable costs.	
4.	2.16D.1 (a)(iii)	Moderate to Major	Synergy notes that the ERA's recent draft Offer Construction Guideline requires Market Participants to calculate their market offers based on the prevailing 'market price' of fuel. Notwithstanding EPWA's proposed changes to clause 2.16.1D(a)(iii) that resolve this issue for gas sourced under long-term take-or-pay gas contracts, Synergy expects many market participants will still source a portion of their gas from the gas spot markets. Synergy reiterates its view that, due to the illiquid nature of the WA spot gas markets, it is virtually impossible for a market participant to estimate the prevailing 'market price' of gas at any point in time. This is a relatively material issue in light of the fact that clauses 2.16C.1 and 2.16C.5 contain objective tests for determining the market price. Consequently, a market participant can breach these clauses even if it uses reasonable endeavours to estimate the prevailing market price of gas, but that estimate is different to the, objectively determinable, prevailing market price of gas (the ERA will presumably have access to more information than any individual market participant, so presumably will be able to better estimate the objective, prevailing market price of gas). Therefore, Synergy considers the WEM Rules should provide an express avenue to resolve the above issues associated with the current requirement for Market Participants calculate their market offers based on the objective, actual, prevailing market price of gas. Synergy suggests this could be implemented by changing the requirement so market participants can include a 'reasonable estimate' of the prevailing market price of gas.	**2.16D.1(a)** … iii. permits the recovery of a reasonable estimate of all efficient variable costs of producing the relevant electricity, including costs incurred under long-term take-or-pay fuel contracts;

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5.	2.16D.4	Moderate	Synergy agrees with the apparent intent behind EPWA's decision to make the ERA's determination of the Offer Construction Guideline a 'reviewable decision' under the WEM Regulations. However, Synergy notes that, under the WEM Regulations, a Market Participant only has standing to apply to the ERB to review a reviewable decision when the market participant's "interests are adversely affected by [the] reviewable decision". Synergy is concerned that, until a Market Participant is found to be in breach of a provision of the Offer Construction Guideline, the Market Participant will not have standing to have the guideline reviewed by the ERA, even if the Offer Construction Guideline is materially inconsistent with the WEM Rules. This could mean that the erroneous, or potentially erroneous, Offer Construction Guideline could remain in force, and have a consequential negative effect on the efficiency of Market Participants' pricing decisions, for some time before it can legally be challenged. This issue could be addressed by extending standing in the case of a review of a guideline to a Market Participant whose interests would potentially be adversely affected by a decision in accordance with the guideline. Alternatively, Synergy suggests that EPWA consider, in addition to this being a reviewable decision, whether the WEM Rules could provide another avenue for reviews of the Offer Construction Guideline. For example, the WEM Rules could provide for EPWA to approve and/or override aspects of the guideline it considers are inconsistent with the relevant WEM Rules and/or the associated policy intent of those Rules.	***Electricity Industry (Wholesale Electricity Market) Regulations 2004*** **Regulation 42(1):** A person whose interests are adversely affected by a reviewable decision or, in the case of the making of a guideline, a person whose interests would be adversely affected if a decision were made in accordance with the guideline, may apply to the Board for a review of the decision"
6.	2.16E.1	Moderate	In clause 2.16E.1, EPWA has proposed prohibiting the ERA from investigating or taking enforcement action against Market Participants for breaches of clause 2.16A.1 unless the ERA has also determined that the breach resulted in 'inefficient economic outcomes'. Synergy is broadly supportive of this prohibition. However, Synergy considers: 1. In order for the ERA to be empowered to investigate or take enforcement action against a Market Participant, the ERA should be required to determine that the relevant offer price has resulted in '***material***' inefficient economic outcomes; and 2. clause 2.16E.1 should refer to clause 2.16A.1 ***and*** clauses 2.16A.2 and 2.16C.5, particularly noting that, unlike clauses 2.16C.5 and 2.16A.2, EPWA is not proposing that clause 2.16A.1 will be a civil penalty provision. Alternatively, if the amendment suggested in paragraph 2 above is not made to clause 2.16E.1, the amendment suggested in paragraph 1 must also be made to clause 2.16C.7.	

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7.	2.26.2, 2.26.2B, 2.26.2F, 2.26.2N and 2.26.2O	Moderate	Synergy considers that a decision by the ERA under clause 2.26.2, 2.26.2B or 2.26.2F, to not include an indexation process in the pricing for the Energy Offer Price Ceiling, an FCESS Offer Price Ceiling or the Energy Offer Price Floor, should be able to be reassessed under clause 2.26.2N if a change in circumstances has occurred and a Rule Participant considers the indexation should be applied. Synergy considers that a decision to include (or not include) an indexation process will be less complex than undertaking an early review of the ceiling prices, and may enable quicker responses to emerging issues. Synergy suggests a new clause is included to allow Rule Participants to trigger a reassessment of inclusion of an indexation process.	**2.26.2NA**. (new clause) Where a Rule Participant considers there has been a material change in market circumstances since the Economic Regulation Authority's most recent review of a Market Price Limit pursuant to clauses 2.26.1, 2.26.2A or 2.26.2C, as applicable, the Rule Participant may, subject to clause 2.26.2O(a), notify the Economic Regulation Authority that it considers that for a Market Price Limit, the determination to apply or not apply indexation to a Market Price Limit is no longer appropriate in accordance with clause 2.26.2O. **2.26.2O.** A notice by a Rule Participant under clause 2.26.2N or 2.26.2NA must: (a) be given no earlier than six months after completion of the most recent review of the relevant Market Price Limit by the Economic Regulation Authority under clauses 2.26.1, 2.26.2A or 2.26.2C, as applicable; and (b) set out the Rule Participant's reasoning, with any supporting analysis, as to why it considers there has been: i. a material change in circumstances such that the relevant Market Price Limit is no longer appropriate~~,~~; or ii. a change in circumstance such that the determination to apply or not apply indexation to a Market Price Limit is no longer appropriate, having regard to the relevant matters in this section 2.26.
8.	2.26.2A and 2.26.2B	Minor	Synergy agrees that the application of different ceiling prices for each FCESS market may be required and notes that the opportunity costs are likely to differ significantly between raise and lower services. Synergy notes that these issues will need to be considered by the Economic Regulation Authority when undertaking the review of each FCESS Offer Price Ceiling.	